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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,666	08/01/2006	Brian John Higgins	4623-053150	3792

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EXAMINER
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DUMAS, NKEISHA J

ART UNIT	PAPER NUMBER
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3632

MAIL DATE	DELIVERY MODE
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06/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,666	<b>Applicant(s)</b> HIGGINS, BRIAN JOHN	
	<b>Examiner</b> NKEISHA J. DUMAS	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/2/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following correspondence is a non-final Office Action for application no. 11/533,666 for a GUTTERING, filed on 10/17/2005. Claims 7-12 are pending.

#### ***Priority***

2. Applicant is advised of possible benefits under 35 U.S.C. 119(a)-(d), wherein an application for patent filed in the United States may be entitled to the benefit of the filing date of a prior application filed in a foreign country.
3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference number 72 (Fig. 8). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective

action in the next Office action. The objection to the drawings will not be held in abeyance.

5. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

#### ***Specification***

6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

7. The disclosure is objected to because of the following informalities: Figures 8(a), 8(b), 10 and 11 are not described in the Brief Description of Drawings.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 7 recites the limitation "when the bracket is attached to the building the clips are aligned *so as to correspond to a fall...*" (emphasis added). This limitation is indefinite because it is unclear what the term "fall" relates to.

11. Regarding claim 7, there is an inconsistency between the language in the preamble of claim 7 and certain portions in the body of the depending claims, thereby making the scope of the claims unclear. The preamble in claim 7 clearly indicates that a subcombination is being claimed, e.g., "a mounting bracket for **a gutter for buildings....**" This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a mounting bracket," the gutter being only functionally recited. This presents no problem as long as the body of the claims also refer to the functionally, such as, "for attachment to said gutter."

The problem arises when the gutter is positively recited within the body of the claims, such as in claim 10 which states, "wherein the mounting means on the internal wall of the gutter is a raised elongated rib." There is an inconsistency within the claims; the preamble of claim 7 indicates subcombination, while in at least one instance in the body of claim 10 there is a positive recital of structure indicating that the combination of a mounting bracket and a gutter are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the mounting bracket or the mounting bracket in combination with the gutter. Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the mounting bracket alone or the combination of the mounting bracket and the gutter. Applicant should make the language of the claims consistent with applicant's intent. In formulating a rejection on the merits, the examiner

is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lasscock (3,864,882).

Regarding claim 7, as best understood, Lasscock teaches a mounting bracket (Figs. 1, 2), the mounting bracket including an elongated bracket body (20) which includes an attachment section (29) which is attachable to the building and a gutter mounting section (21), the gutter mounting section including a plurality of gutter retaining clips (22) arranged along with the gutter mounting section.

Regarding claim 8, as best understood, Lasscock teaches the bracket of claim 7, wherein said elongated bracket body includes a generally U-shaped portion, one leg thereof being the attachment section and the other leg thereof being the gutter mounting section, the legs of the U- shaped portion being spaced apart.

Regarding claim 9, as best understood, Lasscock teaches the bracket of claim 8, wherein the gutter retaining clips include projections which extend into the recess and are adapted to cooperate with the mounting means on the internal wall of the gutter.

Regarding claim 10, as best understood, Lasscock teaches the bracket of claim 9, wherein the mounting means on the internal wall of the gutter is a raised elongated rib (39) which in the installed position is disposed within the recess and inhibited from removal by said projections.

Regarding claim 11, as best understood, Lasscock teaches the bracket of claim 9, wherein said projections are hook-like elements. The examiner notes that this claim involves improper method limitations, because the claim is directed to an apparatus, which are not given any patentable weight.

Regarding claim 12, as best understood, Lasscock teaches the bracket of claim 8, further including a plurality of access apertures (holes located in gutter mounting section through which elements 22 are connected) in the gutter mounting section.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NKEISHA J. DUMAS whose telephone number is (571)272-5781. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nkeisha J. Dumas/  
Examiner, Art Unit 3632

/Anita M. King/  
Primary Examiner, Art Unit 3632

June 8, 2008